



CENTRAL VALLEY JOINT VENTURE

Conserving Bird Habitat in California's Central Valley

Conservation Organizations

Audubon California
California Waterfowl
Association
Defenders of Wildlife
Ducks Unlimited, Inc.
PRBO Conservation Science
River Partners
The Nature Conservancy
The Trust for Public Land

May 24, 2013

John Laird, Secretary
California Natural Resources Agency
1416 Ninth Street, 13th Floor
Sacramento, CA 95814

Dear Secretary Laird,

This letter is a follow-up to the July 23, 2012 letter we sent regarding the habitat needs of migratory birds in the Sacramento-San Joaquin Delta and Suisun Marsh as they are affected by the Bay Delta Conservation Plan (BDCP). We recommended that all Delta-related planning efforts, including BDCP and the work of the Delta Stewardship Council, adopt a goal to *Contribute to the attainment of the acreage, water and bird population goals set forth by the Central Valley Joint Venture Implementation Plan*. We provided several principles and actions to guide planning processes in achieving this goal.

In light of recent progress by the agencies and consultant teams involved in developing and evaluating BDCP operations and financing, we are sending this letter to request the agency take specific actions to abide by the *principles* we recommended previously.

PRINCIPLE 1: Avoid Detrimental Impacts to Wetland Water Supply.

Ensure that BDCP activities: 1) enhance, and do not directly or indirectly compromise the ability to provide full Level 4 and Level 2 water deliveries to federal refuges, state wildlife areas and private wetlands identified in the Central Valley Project Improvement Act (Public Law 102-575) and aid in meeting this existing statutory obligation;

It is clear that actions resulting from implementation of BDCP could affect migratory bird habitat both in the Delta and beyond by affecting water supplies to thousands of acres in the Sacramento and San Joaquin Valleys, areas critical to achieving the goals set forth by the Central Valley Joint Venture. In our collective view, BDCP and related mitigation measures should seek to benefit water supplies to bird habitat both on protected refuges and on compatible agricultural lands both in the Delta and throughout the Central Valley.

Many different water sources supply public and private wetlands located south of the Delta, but many of these sources are north of the Delta. The range of potential options to convey these water supplies to protected wetlands is dramatically constrained by the limited ability to convey water across the Delta, particularly in certain times of year. BDCP should not compromise the ability to provide Level 2 and Incremental Level 4 water deliveries; rather, BDCP should go beyond to support and contribute to achieving CVPIA refuge water mandates. Although BDCP does not include enhancement of the ability to provide these levels of delivery as a goal, funding for enhancement would be appropriate to include in future bonds or other funding vehicles which also provide BDCP funding. Designating a budget source for the State's cost share obligation for Incremental Level 4 water acquisition and conveyance improvements, and then enhancing the budget through funding vehicles developed for BDCP would allow refuge water supply improvements to proceed more quickly and efficiently, significantly benefitting all CVPIA refuges.

and 2) do not negatively impact the water supplies of private and public wetlands, including agricultural wetlands, in the Sacramento and San Joaquin Valleys.

BDCP should not negatively impact the water supplies of wetlands; to the contrary, BDCP should take a step further to sustain and enhance the predictability of water supplies to both public and private managed wetlands and to the thousands of irrigated agricultural areas in the Sacramento and San Joaquin Valleys, critical to achieving Central Valley Joint Venture goals. These areas provide critical waterfowl food resources in California, including winter flooded rice and other bird-friendly crops, as well as nesting and brooding habitat important for breeding waterfowl. Within the BDCP plan area, wetlands should be covered by the Plan's conservation strategy; thus, any impacts should not only be fully mitigated, but also "conserved" through the BDCP conservation measures. Impacts to wetlands outside of the BDCP plan area from BDCP activities should also be fully mitigated. Finally, conservation measures for BDCP and mitigation for BDCP activities should be carried out in accordance with Principle 1.

Action 1.1: Within BDCP's NEPA/CEQA processes, analyze water transfer activities that are within the scope of BDCP specifically for potential adverse impacts to CVPIA refuge water supplies and ensure full mitigation for these impacts.

Existing state laws (WCS 1725, 1736 and 1810) require that water transfers not unreasonably affect fish and wildlife, which includes Giant garter snake, waterfowl and other birds that are dependent on wetlands and on agricultural tailwater that create wetland conditions. The Department of Fish and Wildlife typically recommends to the State Water Resources Control Board that any transfers which impact wetlands include mitigation for unreasonable impacts. While specific water transfers will not be authorized under the BDCP, the agencies, through the NEPA/CEQA process can and should identify the potential impacts to fish and wildlife from transfers, including potential impacts to refuge water supplies mandated by CVPIA, and identify the measures necessary to fully mitigate the environmental impacts. (Mitigation for loss of habitat-compatible agricultural crops is discussed in more detail below.) This will inform future bond acts and/or other BDCP funding measures in which funding from the state or the Potentially Regulated Entities could be included to pay for this mitigation.

PRINCIPLE 2: Mitigate for Impacts to Brackish and Freshwater Wetland-associated Birds and Bird Habitat.

BDCP actions that result in losses of brackish and freshwater wetlands (including seasonal, permanent, and managed wetlands, mud flats, and winter flooded corn and rice areas meeting CVJV Plan criteria) should be fully mitigated consistent with the Natural Communities Conservation Planning Act of 2003 (Fish and Game Code 2800 et seq). Mitigation actions should:

- *Action 2.1: Place mitigation wetlands within the Delta on site and in kind to the maximum extent possible but otherwise within the Central Valley.*

- *Action 2.2: Plan and construct mitigation wetlands near existing wetland complexes whenever possible.*
- *Action 2.3: Fund conservation easements for bird-compatible agriculture that contributes to meeting the CVJV goals.*
- *Action 2.4: Enhance existing wetlands and agriculture to improve their productivity and quality for birds.*

The BDCP conservation strategy and NEPA/CEQA mitigation should specifically provide for offsetting the loss of brackish, freshwater, and managed wetlands and associated uplands and their benefits to waterfowl and shorebirds.

In addition, the conservation strategy and NEPA/CEQA mitigation should provide for offsetting the loss of rice and other crops that support foraging and breeding habitat for birds covered by the BDCP (greater Sandhill crane, tricolored blackbird, western burrowing owl, and Swainson's hawk). Crop losses both within and outside of the Delta that could result from BDCP actions should be considered and mitigated. For example, a water transfer made possible by BDCP actions could result in the fallowing of rice fields that are now supporting habitat for migrating waterfowl, including BDCP-covered bird species. This potential loss of habitat should be offset through established mitigation mechanisms. In the case of a water transfer that results in fallowing of rice fields, the fallowing program should encourage with incentives or require that cover crops (e.g. vetch) be planted on such lands to address water and air quality concerns and provide wildlife habitat benefits such as waterfowl nesting cover. A mechanism could also be implemented that allows for some transferred water to remain in-basin and delivered to a managed wetland as a way to mitigate for lost habitat that would result from a water transfer.

Establishing funding sources for implementation of conservation and wetland mitigation measures should be prioritized. Funding sources could be from a combination of mitigation funds, general obligation bond acts, and new federal funds. Funding should be well in place before a BDCP is approved. Availability of these funds is necessary for the implementation of conservation measures and to allow implementation of wetland mitigation measures. Conservation measures cannot be unfunded mandates nor depend on already stressed funding streams.

BDCP should not compromise long-term state or federal agreements or easements that are now providing for the creation of waterfowl habitat. Potential impacts to such agreements or easements should be considered and fully mitigated. In furtherance of the BDCP conservation strategy, the plan should include funding for conservation easements that maintain waterfowl food resources on agricultural lands in the Central Valley and Delta, which will contribute toward meeting the CVJV goals.

PRINCIPLE 3: Use Adaptive Management to Improve Mitigation Outcomes.

Implement a monitoring and assessment program at all wetland mitigation sites and at regional scales to assess the effectiveness of mitigation actions. Mitigation actions should include clear and measurable goals and objectives.

- *Action 3.1: Establish an independent science advisory panel to assess the effectiveness of wetland mitigation actions. Include representation from the CVJV. This panel could be part of the Delta Stewardship Council's Independent Science Board.*
- *Action 3.2: Develop site level mitigation monitoring and assessment for shorebirds, waterfowl and their habitats using established monitoring protocols so that data generated are compatible with existing monitoring programs (e.g. Pacific Flyway Shorebird Survey, Mid-winter Waterfowl Survey).*

- *Action 3.3: Develop and/or support maintenance plans that contain performance standards to ensure long term sustainability of sites.*
- *Action 3.4: If mitigation outcomes are deemed by the advisory panel to be insufficient, make sure there is capacity to adapt the mitigation program to meet the objectives.*

The BDCP conservation strategy should require monitoring of all restoration sites and protected lands in the reserve system to ensure that they are meeting their intended functions, including providing shorebird and waterfowl habitat. Restoration plans and management plans for all reserve lands should include performance standards to ensure their long-term sustainability. Finally, periodic scientific reviews by independent panels should provide assessment of the monitoring results. If performance standards are not being met, management activities should be adjusted to meet them.

A comprehensive and integrated BDCP has the potential to improve wetland and agriculture habitats important to birds, fish, and terrestrial wildlife. It must be thoroughly evaluated in regards to impacts on migratory birds and impacts avoided, reduced or mitigated to ensure consistency with the Delta Reform Act. We encourage you to continue working closely with Ducks Unlimited, Audubon California, California Waterfowl Association, and other Joint Venture members to determine the potential benefits and impacts of BDCP on the present and future migratory bird habitats within the Delta, Suisun Marsh, and throughout the Central Valley.

The support of the organizations that make up the Central Valley Joint Venture can assist in obtaining the funds necessary to carry out our mutual goals as described in this letter. We look forward to working with you to successfully complete BDCP in a way which benefits the waterfowl and other wetland-dependent bird species of the Central Valley.

Sincerely,



Ellie Cohen
Management Board Chair

cc: Jerry Meral, Deputy Secretary, Natural Resources Agency
Chuck Bonham, Director, Department of Fish and Wildlife
Mark Cowin, Director, Department of Water Resources
CVJV Management Board